

## **EXHIBIT E**

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1       ROUGH DRAFT -- Since this deposition is in rough  
draft form, please be aware that there may be a discrepancy  
2 regarding page and line number when comparing the rough  
draft, rough draft disc, and the final transcript.

3       Also, please be aware that the uncertified rough  
draft transcript may contain untranslated steno, reporter's  
4 note in brackets or misspelled proper names, incorrect or  
missing Q/A symbols or punctuation, and/or nonsensical  
5 English word combinations. All such entries will be  
corrected on the final, certified transcript.

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\* \* \* \* \*

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8 [BY MR. JONES:] [Prockish]

9       Q. Ms. Prockish, I'm Craig Jones and I represent Mr.  
10 Hesketh in this lawsuit. We're here to take your deposition  
11 today. Have you ever given a deposition before?

12       A. Yes, I have in a previous role.

13       Q. Okay. And how many depositions have you given  
14 previously?

15       A. One.

16       Q. And what was the occasion for you to have sat for a  
17 deposition?

18       A. It was in connection with my role with my previous  
19 employer.

20       Q. Okay. And previous employer gives me an idea of the  
21 role that that person played but not the name. So would you  
22 give me the name of your previous employer.

23 A. Municipality of Anchorage.

24 Q. I'm sorry?

25 A. Municipality of Anchorage in Alaska.

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1 Q. Alaska, okay. Would you just give me an idea of  
2 what that was about. I mean were you just a witness; were  
3 you a party to that litigation? Give me some sense of what  
4 it was.

5 A. I was a payroll manager at the time. And so based  
6 on my role, I was asked to give testimony, be deposed.

7 Q. Be deposed, right. So it's sort of like -- well,  
8 you have something to do with payroll here, don't you?

9 A. Yes, sir, I'm the payroll director.

10 Q. Now, how long ago was that deposition, Ms. Prockish?

11 A. Roughly ten years ago. I don't recall the exact  
12 date.

13 Q. Okay. Well, you probably still remember some of the  
14 ground rules but let me go over them again if you don't  
15 mind. I'd like for you to answer out loud. Don't say  
16 uh-huh or huh-uh because if you do our court reporter  
17 Christina, who is very good, may not pick it up correctly  
18 because we are doing this remotely by Zoom. Would you do  
19 that for me, please?

20 A. Yes.

21 Q. Secondly, I would like, while you're probably going  
22 to understand what I'm asking you before I finish saying it  
23 out loud, but if you hesitate just a second before you begin  
24 your answer, I would appreciate it; because you see once we  
25 finish your testimony here today, the court will type it up

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1 into booklet form. And if you began your answer one word  
2 before I finish my question the way that court reporters are  
3 trained to show that we were both speaking at the same time  
4 is that she'll put half of the question on one line, your  
5 answer on the second line, and the other half of the  
6 question on the third line. It will kind of make for rough  
7 reading when we go over this. Would you do that for me,  
8 please?

9 A. Yes, sir.

10 Q. This is very important. If I should ask you a  
11 question and you don't understand it, I don't want you to  
12 answer the question. I want you to tell me that you don't  
13 understand it and I'll rephrase it. And we'll stay here as  
14 long as we can until we understand each other. Would you do  
15 that for me, please?

16 A. Yes, sir.

17 Q. Now, conversely if I ask you a question and you  
18 answer it, I'm going to assume that you understood the  
19 question and that your answer was directed to the question  
20 that I asked; is that fair?

21 A. Yes, it is.

22 Q. Okay. Do you recognize and understand that even  
23 though you are not in a courtroom today, that you're under  
24 oath today as if you were in a courtroom subject to the  
25 penalties of perjury?

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1 A. Yes, I do.

2 Q. I want you to understand that I have taken an oath  
3 to represent my client. And to represent my client as has  
4 your attorney -- I say your attorney -- the attorney here  
5 representing your employer as is Ms. Henry. And this is  
6 probably going to be the only time that I have to speak with  
7 you before we go to trial on these matters. So the reason  
8 that I bring that up is that the -- you realize that you  
9 have a duty of truthfulness; is that correct?

10 A. Yes.

11 Q. And you came here today, I presume, to be true to  
12 that duty, correct?

13 A. Correct.

14 Q. But witnesses also have something more than a simple  
15 duty to be truthful. They also have a duty to be frank;  
16 that is that they should frankly address their answer to the  
17 question that is asked and give a fair and full answer. Are  
18 you prepared to do that today?

19 A. Yes, I am.

20 Q. Thank you. Let me tell you how I take a deposition.  
21 So as you can tell, I'm not a hide the ball kind of lawyer.  
22 I'm going to ask you a few questions about yourself, general  
23 background questions, a little bit about your education, and  
24 your work history, and then I'm going to ask you a few  
25 questions about what you may or may not know about this case

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1 and then, you know, the attorney for the defendants may or  
2 not have some follow-up questions. Okay?

3 A. Yes.

4 Q. So we're going to start out by asking you to give us  
5 your full name, please.

6 A. Toni Rachelle Prockish.

7 Q. Where do you reside?

8 A. I reside in Auburn, Washington.

9 Q. And are you at your home right now?

10 A. I'm actually at DaVita's office in Federal Way.

11 Q. In where?

12 A. Federal Way, Washington at a DaVita business office.

13 Q. And are you in your office?

14 A. Yes, I am.

15 Q. Okay. And I want you to give me a thumbnail sketch  
16 of your educational background. Let's just start with high  
17 school, when and where you graduated, and you just bring me  
18 forward. All right?

19 A. Sure. I graduated from Bartlett High School in  
20 Anchorage, Alaska in 1992; after graduating from high  
21 school, I went to the University of Oregon in Eugene until  
22 1996 when I graduated with an accounting and finance degree.

23 Q. Okay. And if you would, would you do the same; give  
24 me a thumbnail sketch of your work history, starting with --  
25 let's say after you finished college and bring us forward;

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1 is that okay?

2 A. Sure. Happy to do so. Once I graduated from  
3 college, I had a temporary position in the accounting  
4 department at the Anchorage School District for six months.  
5 After that temporary role, I moved to a CPA firm for a  
6 period of a year and a half. I then returned to the  
7 Anchorage School District from August of 1998 through the  
8 beginning of 2002 when I went to Chugach, which is a native  
9 corporation. I was employed there for four months as an  
10 accountant. I then moved to the Municipality of Anchorage  
11 where I spent my time of almost 12 years there as a payroll  
12 accountant, payroll supervisor, and then finally a payroll  
13 manager. And my last employer has been DaVita as payroll  
14 director for the last six-and-a-half years.

15 Q. And where have you been, for lack of a better term,  
16 stationed with DaVita; the same place all the six-and-a-half  
17 years?

18 A. That's correct, Federal Way, Washington.

19 Q. Okay. And is that the office that you're in right  
20 now?

21 A. Yes, sir.

22 Q. So what are -- I'm sure that you have lots and lots  
23 of duties. I wanted to ask you this if I could back up.

24 Did you ever obtain your CPA certificate? Are you  
25 certified --



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1 A. No, I did not.

2 Q. What are your duties generally as the payroll  
3 director -- well, I guess I should ask you this, who is your  
4 payroll employer?

5 A. I am employed by Total Renal Care.

6 Q. Which takes us backwards now. Have you been  
7 employed by Total Renal Care for six-and-a-half years?

8 A. Yes.

9 Q. You said earlier that you were employed by DaVita;  
10 but your payroll employer is Total Renal Care, true?

11 A. That is the payroll entity for which I am paid  
12 under.

13 Q. Now --

14 A. Which is under the DaVita umbrella.

15 Q. Do you know anything about the corporate structure  
16 in DaVita?

17 A. Yes.

18 Q. Can you give me a thumbnail sketch of the corporate  
19 structure of DaVita?

20 A. Yes. We have roughly 30 plus payroll entities that  
21 fall under the DaVita umbrella for which we pay teammates.

22 Q. Give me a general understanding of what your duties  
23 are as the payroll director of -- well, is your title the  
24 payroll director for Total Renal Care or just payroll  
25 director?

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1 A. My title is director of payroll.

2 Q. Director of payroll. For Total Renal Care?

3 A. For all DaVita entities.

4 Q. What are the duties of director of payroll?

5 A. Oversight over the U.S. payroll for the 30 plus  
6 payroll entities and teammates.

7 Q. Would you say a little more about that? What do you  
8 mean by oversight?

9 A. My team is comprised of multiple lanes, one of which  
10 is a call center. So if a teammate or manager or a third  
11 party vendor has a question, they call into my service  
12 center and have their questions addressed. I also have a  
13 team of liaisons that are responsible for processing all HR  
14 related transaction before they go into the payroll system  
15 for processing. Under my purview is also a payroll tax  
16 team, a payroll accounting team. I have admins on my team  
17 as well. I have an assistance team that's responsible for  
18 maintenance and upkeep of our timekeeping and payroll system  
19 and then I also have a team of coordinators that's  
20 responsible for processing of our payroll.

21 Q. Right. So what kind of timekeeping system is  
22 utilized by DaVita?

23 A. DaVita utilizes Peoplenet.

24 Q. Say more about that, please. Peoplenet, N-E-T?

25 A. Yes, correct.

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1 Q. Okay. What is Peoplenet?

2 A. It is a tool that collects time data as well as  
3 attendance data for teammates in order for them to be paid.

4 Q. All right. You're familiar with Peoplenet?

5 A. Yes, sir.

6 Q. So what kind of reports do you get from Peoplenet?

7 For instance, let's start with time and attendance reports.

8 Do you get those? Can you get those, generate those?

9 MS. PETERSEN: Object to the form.

10 MR. JONES: What's your objection to form, Counsel?

11 MS. PETERSEN: Compound.

12 Q. Let me clean it up for you a little bit, Ms.

13 Prockish. Counsel is right.

14 Can Peoplenet generate reports that detail time and  
15 attendance for DaVita employees?

16 A. Yes.

17 Q. How often are those reports generated?

18 A. It depends on the request. We can pull the data on  
19 a daily basis, a weekly biweekly. It depends on the  
20 request.

21 Q. So if an DaVita becomes ill and has to take a sick  
22 day, that would be entered into the Peoplenet system and a  
23 record would be kept if this particular employee was ill on  
24 this particular day, true?

25 A. We do require that time off is entered into the

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1 Peoplenet timekeeping system. We do not track whether or  
2 not the teammate is sick or if it's a personal day.

3 Q. Tell me your understanding of how that works. Are  
4 teammates given sick days?

5 A. If you are a per diem teammate or a teammate in a  
6 director and above position, you do accrue or have a balance  
7 of sick leave. All other teammates have a PTO balance.

8 Q. You said PTO?

9 A. Yes, paid time off.

10 Q. Okay. So their paid time off for whatever reason,  
11 correct?

12 A. That's correct.

13 Q. All right. Now, do you know how much an employee  
14 would start out; how many PTO days they would have in their  
15 first year with DaVita? Or do you have to work a period of  
16 time before you are considered to have earned those PTO?

17 A. PTO starts accruing from day one and is dependent  
18 upon the hours worked by the teammates.

19 Q. Okay. Is there a formula?

20 A. Yes, there is a formula.

21 Q. What is the formula?

22 A. I do not have that information readily available.  
23 It is listed in our teammate policy.

24 Q. You're not familiar with it?

25 A. I am familiar with it. I don't recollect what each

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1 accrual is based on years of service.

2 Q. Okay. Thank you, Ms. Prockish. I forgot to talk

3 about this. If you don't remember something, that's the

4 correct answer. It's not a memory test and it's really not.

5 Also it's not a marathon. So anytime that you need break,

6 even if you need a comfort break, if you need to just stand

7 up and stretch your legs or maybe you need go to the powder,

8 room, whatever, you just tell me and then we're going to

9 accommodate you. Okay?

10 A. Thank you.

11 Q. You're welcome. I understand from a previous

12 deposition that certain offices under the DaVita umbrella

13 were closed in -- well, let me break that down. I

14 understand from testimony from a previous deposition that

15 certain employees under -- the companies under the DaVita

16 umbrella, began around the middle of March to work remotely.

17 Do you know what I'm talking about -- in the middle of March

18 2020?

19 A. Yes, I do.

20 Q. All right. Did you work remotely in 2020 anytime?

21 A. Yes, I did.

22 Q. Tell me about that.

23 A. The majority of my time was sent working remotely.

24 Q. Okay. So when did that start?

25 A. I started working remote the end of March, early

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1 April of 2020. I don't recollect the exact day.

2 Q. So you've been in that office for six-and-a-half  
3 years, correct?

4 A. That's correct.

5 Q. And it sounds to me like under your supervision that  
6 you have a substantial staff; is that true?

7 A. Yes, that's correct.

8 Q. How many people do you supervise?

9 A. Just over 50.

10 Q. And where are these 50 located?

11 A. Their business office is in Federal Way, Washington  
12 where I am currently residing.

13 Q. What is the address of your office in Federal Way,  
14 Washington?

15 A. 32275 32nd Avenue south.

16 Q. I'm going to call that 32nd Avenue, if you don't  
17 mind. So could we understand each other that I'm talking  
18 about the office that you're in right now we'll refer to it  
19 as the office at 32nd Avenue?

20 A. Yes.

21 Q. Okay. So are the 50 staff members, for lack of a  
22 better term, that you supervise, are their offices in the  
23 32nd Avenue building in Federal Way?

24 A. Yes.

25 Q. Okay. And since you've been there for

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1 six-and-a-half years, has your staff that you supervise been  
2 in the same building as your office?

3 A. Yes.

4 Q. And that building at 32nd Avenue is where you and  
5 the staff members that you supervise conduct their regular  
6 duties; is that correct?

7 A. Yes.

8 Q. Until sometime around March of 2020 and that  
9 changed; is that correct?

10 A. Yes, that is correct.

11 Q. And what changed?

12 A. The coronavirus pandemic occurred in mid -- hit us  
13 in mid March of 2020 and the majority of my teammates  
14 started working remotely from their home.

15 Q. Okay. And what was it that prevented them from  
16 coming to the 32nd Avenue building in Federal Way?

17 A. The shelter in place order by our governor.

18 Q. So their regular duties, then, in the building at  
19 32nd Federal Way -- I got that all backwards. Do you mind  
20 if I start over again?

21 A. Please.

22 Q. The shelter in place order then in effect prevented  
23 them from performing their regular duties at their normal  
24 offices on 32nd Avenue in Federal Way, Washington, true?

25 A. Yes, unless they had a letter signed by our chief

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1 accounting officer indicating that they were an essential  
2 worker that required them to come into the building to  
3 perform their work.

4 Q. Do you have such a letter?

5 A. I did, yes.

6 Q. Did you still work remotely?

7 A. I did. But on certain occasions when it was  
8 necessary for me to come into the office, I did.

9 Q. And my understanding is that the shelter in place  
10 order took place because of the infectious nature of  
11 COVID-19; is that your understanding?

12 A. Yes, that is my understanding.

13 Q. Before the shelter in place order, did you keep  
14 regular office hours as part of your duties for your  
15 employer?

16 A. Yes, I had regular office hours but worked long  
17 after those regular hours on occasion.

18 Q. I know the feeling. So it sounds like you were a  
19 dedicated -- that you are a dedicated employee to Total  
20 Renal Care and I appreciate that. But when we're talking  
21 about your regular duties, I mean when you signed on, did  
22 someone tell you now, you know, tell you your regular duties  
23 are going to be 60 to 70 to 80 hours a week or something  
24 like that. Did they tell that you or did they tell you that  
25 your regular duty hours were going to be 8 to 5? Help me



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1 understand.

2 A. I knew, based on the nature of my employment, that I  
3 would have standard hours. However, I would likely exceed  
4 those on a regular basis due to job requirements.

5 Q. Right. Well, because -- I get it. You have got a  
6 big job, but it's bigger at certain times of the year than  
7 it is in others; isn't that true?

8 A. Yes.

9 Q. Tax season, right?

10 A. Every two weeks when we process payroll.

11 Q. That's right. And, okay, so your tax season happens  
12 every 14 days, then, right? I get it.

13 A. Essentially, yes.

14 Q. Okay. Now, how do you know -- I say you -- what is  
15 the name of your department?

16 A. The payroll department.

17 Q. Okay. I suspected that. But, you know, in my  
18 business you learn not to assume anything, okay. So I'm  
19 going to refer to it as the payroll department, okay?

20 A. Okay.

21 Q. Now, Ms. Prockish, how does your department know  
22 what to pay a particular employee of one of these 30  
23 companies that the payroll department does payroll for?

24 A. Payments to teammates are based on the information  
25 that is incorporated into the Peoplenet time and attendance

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1 system as well as any additional compensation that's  
2 processed through Workday which is our payroll platform.

3 Q. Okay. Now, here's something new that I would like  
4 to understand. If you can, help me, please. We have a  
5 system that is referred to as Peoplenet, right?

6 A. Yes, our time and attendance system.

7 Q. That's time and attendance. And what was the other  
8 system?

9 A. Workday.

10 Q. W-O-R-K-D-A-Y?

11 A. Yes.

12 Q. One word or two?

13 A. One.

14 Q. What is that?

15 A. Workday is our human capital management system where  
16 our payroll is processed. The system also has compensation  
17 data in it as well used for talent management, teammate  
18 reviews, HR transactions such as hiring, promotions,  
19 demotions any job changes.

20 Q. Okay. Thank you. Do you know Carol Strong?

21 A. Yes, Carol is on my team.

22 Q. And you refer to your team. Can you say more about  
23 what you mean by your team?

24 A. My team are the individuals I spoke about earlier as  
25 they cross lanes in the payroll department, so the service

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1 center is the liaison. All of those lanes compose my team.

2 Q. All right. What is Ms. Strong's position in your

3 team?

4 A. Carol is a project specialist.

5 Q. What is that?

6 A. She is responsible for assisting us in gathering  
7 data related to time and attendance and payroll as requested  
8 by various departments within the organization and other  
9 duties as assigned.

10 Q. All right. How long has Carol been a part of your  
11 team?

12 A. Three plus years.

13 MR. JONES: Can we put Exhibit 13 on the screen.  
14 Chelsea, are we doing this?

15 MS. HENRY: I'm going to work on it here.

16 MR. JONES: Chelsea, how are we doing this? Are we  
17 attaching the exhibits to the depositions? I know they've  
18 been previously provided to you but I missed out on the  
19 early part of these depositions. What's the established  
20 protocol, please?

21 MS. PETERSEN: Scott, can tell you probably more  
22 than I can. But we were provided with a master list of  
23 exhibits. I can't tell you if 13 has yet been introduced.

24 MR. JONES: Can we have this agreement? I'm going  
25 to attach 13 to her deposition. And we'll make a record

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1 just what you said -- you said it in as few words that can  
2 be said, is that we have presubmitted some exhibits to  
3 opposing counsel and they've been previously numbered. So  
4 if they're out of number and if anyone reads this, I want  
5 them to be able to read the instructions first, okay.

6 MS. PETERSEN: If I can interject for just a minute,  
7 we did receive a master exhibit list. I believe that there  
8 may be some exhibits that were not provided to us.  
9 Thirteen, in particular I don't believe was previously  
10 provided. So exhibits, I believe, 1 through 12 were  
11 previously provided. Thirteen through 16, as I'm seeing on  
12 the screen right now were not previously provided. So those  
13 have not yet been identified.

14 MR. JONES: It's Ms. Strong's -- I'll tell you  
15 right. It's Ms. Strong's affidavit that was attached, I  
16 believe, to Total Renal Care's answer. And I know all  
17 that's backwards. It's just the way that it happened.

18 MS. PETERSEN: There's no affidavit. It's a  
19 declaration. It was attached to the removal papers, not the  
20 answer. There's only one Strong declaration and I believe  
21 that's what you're referring to.

22 MR. JONES: Thank you for correcting me on that.  
23 You're absolutely correct. Well, let's attach this as  
24 Exhibit 13 to Ms. Prockish's deposition.

25 Q. The way we'll proceed is that, you know, we'll put

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1 it on the screen for you Ms. Prockish because we're all in  
2 different rooms.

3 [Shares screen]

4 Q. This is an affidavit.

5 MR. JONES: If you could put it up Christina, I  
6 would appreciate it.

7 MS. HENRY: It is up there. Can you see it?

8 MR. JONES: Yeah. I just need to get some stuff out  
9 of the way.

10 MS. PETERSEN: Counsel, the exhibit is not visible.

11 (Discussion off the record.)

12 MS. PETERSEN: Counsel, it would be helpful, since  
13 it is a compressed screen, if you could potentially scroll  
14 to show the entirety of the document.

15 MS. HENRY: Sure.

16 MS. PETERSEN: Thank you.

17 Q. All right. Now, Ms. Prockish, this is a declaration  
18 that was attached to Total Renal Care's removal document.  
19 That's lawyer stuff in this case. I want to go to the  
20 second page of the declaration page, please. And I want to  
21 direct your attention to paragraph 5 of Carol Strong's  
22 declaration. And it reads like this, [\*] on March 31, 2020  
23 DaVita changed its Disaster Relief Policy. Do you see what  
24 I just read?

25 A. Yes, sir.

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1 Q. All right. Do you know what the Disaster Relief

2 Policy is?

3 A. Yes.

4 Q. How do you know?

5 A. I was involved in the creation of the policy back in

6 2017 at the time of Hurricane Harvey.

7 Q. And let's talk a little bit about your involvement

8 in the creation of the policy. How is it that you were

9 involved in the creation of the policy back in 2017?

10 A. Back in 2017 when Hurricane Harvey hit there was a

11 conversation with local leaders and people services on what

12 we should do to help compensate teammates. And during that

13 process a teammate had brought forth a local practice that

14 discussed how teammates were paid in a disaster. It was not

15 an official teammate policy at the time.

16 Q. Let's stop right there. Again, this is 2017, right?

17 A. Yes.

18 Q. Let's see if we could put some names to these -- to

19 the pronouns here. Who is it that you were involved with in

20 creating the Disaster Relief Policy?

21 A. Well, I don't remember exact names. I do recall

22 that it was a number of teammates from people services as

23 well as myself, my direct manager, and my manager's manager.

24 Q. Name, please. I don't know who -- let me just say

25 this, when you say your manager or your direct manager, I

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1 don't know who that is. If you don't mind -- I don't mind  
2 you describing them as managers but if you could give me the  
3 names also, I would appreciate it. So can we go back and  
4 I'll give you another shot at that.

5 A. My manager was Lin Whatcott L-I-N W-H-A-T-C-O-T-T  
6 and his manager was Scott Stewart.

7 Q. Scott who?

8 A. Stewart S-T-E-W-A-R-T.

9 Q. Okay. So let's go into a little detail about how  
10 this all kind of sort of came about. You said that in  
11 Hurricane Harvey that there was a teammate that came forward  
12 that was talking about some things that were being done in  
13 the area where that teammate was. Why don't you tell me who  
14 the teammate who came forward was?

15 A. I do not have that teammate's name.

16 Q. Do you remember anything about the teammate?

17 A. No, I do not. The document was not provided to me  
18 directly by the teammate.

19 Q. Oh, okay. How did this teammate communicate with  
20 you?

21 A. The teammate did not communicate directly with me.  
22 It was brought to people services' attention.

23 Q. Okay.

24 MS. PETERSEN: Counsel, not to interrupt, can I ask  
25 a favor? If we're not currently referencing the exhibit, is

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1 it possible to take that down? Sorry. It's just that  
2 otherwise I actually can't see the witness speaking.

3 MR. JONES: Let me just ask her this and then we  
4 take it -- let's put it back up.

5 MS. HENRY: Okay.

6 MS. PETERSEN: Thank you.

7 MS. HENRY: I'll put it back up.

8 [Shares screen]

9 Q. Paragraph 5 says, [\*] on March 31, 2020 DaVita  
10 changed its Disaster Relief Policy. Do you see that?

11 A. Yes.

12 Q. Do you know what changed that Ms. Strong is  
13 referring to?

14 A. Yes.

15 Q. Would you tell me?

16 A. There was a paragraph added clarifying the policy  
17 where the pandemic did not apply.

18 Q. Is that the paragraph that's called the COVID-19  
19 crisis?

20 A. I don't have the policy in front of me, so I can't  
21 say yes or no to that.

22 Q. Just tell me what you remember.

23 A. I don't remember the header.

24 Q. Okay.

25 MR. JONES: Christina, if you don't mind, let's put



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1 Exhibit 8 up. [\*\*]

2 [Shares screen]

3 MR. JONES: We'll attach this as Exhibit 8. And

4 I'll, for the record, identify it as previously being Bates

5 stamped TRC 000203 through 000204. Are you with me,

6 Chelsea?

7 MS. PETERSEN: I am.

8 MR. JONES: Let's back it up a little bit if we can,

9 Christina.

10 MS. HENRY: So am I going to the page? Is that what

11 you want me to do?

12 MR. JONES: Go to page 49.

13 MS. HENRY: Okay.

14 Q. Do you see here, this is page 49 of the DaVita

15 teammate handbook. Have you seen this document before? Are

16 you familiar with it?

17 A. Yes, I am.

18 Q. Section 4.12 of the Disaster Relief Policy, does

19 that look like the policy that we're talking about that you

20 were involved with creating?

21 A. Yes.

22 Q. And then we scroll down and we see a paragraph that

23 says [\*] COVID-19 crisis. Is that the paragraph that was

24 added to the DaVita Disaster Relief Policy on 31 March 2020?

25 A. Yes.

00024

1 Q. All right.

2 MR. JONES: You can take it down now.

3 Q. So before we did that -- and I kind of took it out

4 of order so we could like get those documents off the

5 screen. We were talking about the creation of the Disaster

6 Relief Policy. And how did this unknown or rather

7 unremembered teammember's idea, how was it first brought to

8 your attention?

9 A. It was in conversation with people services.

10 Q. Okay. What are people services?

11 A. People services is our Human Resources department.

12 Q. Who within people services did you have the

13 conversation with?

14 A. It was a broad number of teammates. The chief of

15 staff.

16 Q. Name?

17 A. Jeff Reib.

18 Q. Who's staff was Jeff Reib -- is it Reib or Reed?

19 A. Reib, R-E-I-B. I may have the I and the E switched.

20 Q. Who's staff is he chief of?

21 A. At the time Erik Seversen was the chief people

22 officer.

23 Q. Seversen?

24 A. Yes, sir. S-E-V-E-R-S-E-N, and I believe his name

25 was E-R-I-K.

00025

1 Q. Got you. All right. So was it Mr. Jeff Reib who  
2 first brought the suggestion by the unremembered team member  
3 to your attention?

4 A. Jeff wasn't the only one that was in people  
5 services.

6 Q. There can only be one first. Let's back up, okay.  
7 I'm sorry. I didn't mean to interrupt you. I just wanted  
8 to kind of get us back on track. I'm talking about the  
9 first person that brought this suggested policy that  
10 ultimately ended up being the Disaster Relief Policy. Who  
11 was the first person who brought it to your attention?

12 MS. PETERSEN: Objection. That misstates the prior  
13 testimony.

14 Q. I'm sorry. You can answer.

15 MS. PETERSEN: You can --

16 A. I do not recall

17 MS. PETERSEN: -- answer. Sorry. The hazards of  
18 Zoom calls here. You can answer with if you understood.

19 Q. You don't recall?

20 A. No.

21 Q. Okay. How was it brought to your attention?

22 A. The information was brought to my attention by a  
23 teammate in people services. I don't recall who the  
24 teammate was.

25 Q. All right. Well, give me some context. Tell me

00026

1 what you remember about it and how it came up.

2 A. I remember being in a meeting with the group of  
3 individuals from people services and they indicated that a  
4 teammate had brought forth a local policy or practice that  
5 had been implemented prior when there was a natural  
6 disaster.

7 Q. Okay. Why were you in that meeting?

8 A. To discuss how to support our teammates in need  
9 during the crisis.

10 Q. And who else was in the meeting that you recall?

11 A. I don't recall specific names, no.

12 Q. At all? None?

13 A. No.

14 Q. Was Mr. Reib there?

15 A. I can't say for certain.

16 Q. Where was the meeting? Where was it taking place?

17 A. It was a conference call. I was in my office.

18 Q. Do you keep a calendar?

19 A. My Outlook calendar, yes.

20 Q. All right. And do you keep it to yourself or do you  
21 have a secretary that keeps it?

22 A. I manage my own calendar.

23 Q. How long have you utilized Outlook?

24 A. I'm sorry. I didn't hear the entire question.

25 Q. Yeah, I know. I was trying to get the sun out of

00027

1 here. I realized you probably -- it looks like I'm like in

2 a dark corner here.

3 How long have you utilized Outlook?

4 A. Since I've been employed with DaVita.

5 Q. Okay. And have you gone -- have you had any type of

6 failure about the Outlook calendar function?

7 A. Not that I generally recall, no.

8 Q. But you should have six-and-a-half years of

9 calendars preserved in Outlook, true?

10 A. No, that is not true.

11 Q. Why not?

12 A. DaVita has a retention policy. And as of the end of

13 March our calendars were cleaned up based on that retention

14 policy.

15 Q. March of this year?

16 A. Yes, sir.

17 Q. How many times that you've been with DaVita, have

18 your calendars been cleaned up?

19 A. This is the first time that I'm aware of.

20 Q. Who told to you clean your calendar up?

21 A. It was a village wide email that went out indicating

22 that our meetings could only be one year of duration and our

23 calendars would be cleaned up for appointments going back

24 and that were longer than a year.

25 Q. By cleaned up you mean erased?

00028

1 A. Yes.

2 Q. Did you do that?

3 A. Did I erase my calendar?

4 Q. That's my question.

5 A. No, I did not erase my calendar.

6 Q. Who did?

7 A. I would presume it was our IT department.

8 Q. So do you still have your email?

9 A. I still have my email in my Outlook, yes.

10 Q. I want you to preserve that email. I want to make  
11 sure you get it to Ms. Prockish with all of the metadata  
12 without changing it at all. Can you do that for me? I'm  
13 sorry. I said your name. Let me start over.

14 I need you to get that to defense counsel, Ms.  
15 Prockish -- is what I meant to say -- with its incorporated  
16 metadata without changing any of it. Can you do that for  
17 me, please?

18 MS. PETERSEN: To the witness, I'm not asking that  
19 you provide me with your email and metadata. Absolutely  
20 preservation steps will be taken. But I am not asking you  
21 to give me your data.

22 MR. JONES: Well, she can give it to me if you don't  
23 mind.

24 MS. PETERSEN: Counsel.

25 MR. JONES: Just preserve it, Ms. Prockish, please.

00029

1 Q. So you have this meeting, this conference call,  
2 right in 2017 after Hurricane Harvey, right. And you come  
3 to understand that there's a local practice -- and I'm  
4 assuming Texas? Would that be --

5 MS. PETERSEN: Object to form.

6 Q. Do you understand that the local practice that you  
7 were informed about was in the Texas area. I think that's  
8 where Harvey struck?

9 A. I presumed that the teammate was in Texas.

10 Q. Okay. So you have a conference call. Give me the  
11 gist of the conference call. Was this to discuss a  
12 potential policy? Was it to announce a policy that already  
13 had been vetted and completed? Was it to set up a team to  
14 vet the policy? What was the topic and the outcome of the  
15 conference call?

16 A. Well, there wasn't just one conference call to  
17 discuss how we can support our teammates during this natural  
18 disaster. There were a number of conference calls to  
19 discuss that and the paperwork that the teammate had brought  
20 forth.

21 Q. What paperwork was that?

22 A. Out of the documents that I previously referenced  
23 indicating how teammates were paid in a natural disaster --  
24 the local policy, not a teammate policy.

25 Q. Let me see if I understand this. So that we don't

00030

1 jump around, I'm going to take you chronologically through  
2 what you remember, Ms. Prockish, okay. I think to me that's  
3 the most logical way to do it.

4 So you're in this conference call and a teammate  
5 whom you presume from the Texas area brought forth some  
6 paperwork and it was a local practice. And that paperwork  
7 documented the policy more or less that ultimately became  
8 the Disaster Relief Policy of the DaVita teammate handbook;  
9 is that correct?

10 MS. PETERSEN: Objection, assumes facts not in  
11 evidence.

12 Go ahead. You can answer.

13 Q. I'm not assuming anything. Let's understand, first  
14 of all, what lawyers do, Ms. Prockish. Since there's no  
15 judge here, if we were in court, any objections would go to  
16 the judge and the judge would resolve them right there and  
17 then we would move on. Because there's not a judge here,  
18 what happens is that lawyers if they feel that they have an  
19 objection to the question, they preserve the objection and  
20 then generally you can answer the question unless instructed  
21 not to by counsel. Not me, I can't instruct you one way or  
22 the other.

23 So let's go back to this. Tell me about what you  
24 recall about the paperwork that this unremembered teammate  
25 brought forward concerning the local practice. Did you ever



00031

1 see it?

2 A. No, I did not.

3 Q. How did you know then that it ultimately ended up  
4 being the policy and not the Disaster Relief Policy? That  
5 wasn't your testimony. I'm giving you the opportunity to  
6 give it to me again because I misunderstood it.

7 A. The information contained in that local practice did  
8 not end up in the Disaster Relief Policy. It was not the  
9 precipitous or the -- it wasn't used in its totality to  
10 become the Disaster Relief Policy.

11 Q. Do you remember anything about that policy that the  
12 unremembered teammate brought forward; anything about the  
13 substance of it?

14 A. It indicated how teammates were paid, if they were  
15 to receive overtime or double-time compensation.

16 Q. Okay. I want to know everything you remember about  
17 it because if we end up in court I don't want to go to court  
18 and say, well -- and you remember something about this  
19 document and I say, well, why don't you tell me that in the  
20 deposition. And you tell me, well, you didn't ask me. You  
21 understand? I'm asking you right now. Tell me everything  
22 you remember about it.

23 A. I shared what I remember.

24 Q. That's all?

25 A. Yes.

00032

1 Q. So how did the policy that is the Disaster Relief  
2 Policy that was adopted by DaVita, how did the substance of  
3 that policy come about?

4 A. The policy came about through discussions with  
5 people services, myself, Lin Whatcott, and Scott Stewart on  
6 how to best handle situations where teammates are not able  
7 to perform their regular duties.

8 Q. Okay.

9 MR. JONES: Now let's put up Exhibit 5. We'll  
10 attach exhibit 5 to Ms. Prockish's deposition. [\*\*]

11 [Shares screen]

12 MS. PETERSEN: Counsel, while we're pausing for a  
13 second, we have been going for an hour -- not that we need a  
14 break immediately or anything like that -- but I would  
15 suggest that in the next five minutes or so if we can take a  
16 quick break, that would be helpful.

17 MR. JONES: This is a perfect time. So then my IT  
18 person, Ms. Henry, can catch up.

19 [Shares screen]

20 Q. Before we take a break, let me ask you these  
21 questions if you don't mind, Ms. Prokish, okay.

22 What kind of communications devices do you have  
23 available within arm's length reach now? Do you have a cell  
24 phone?

25 A. Yes.

00033

1 Q. Have you communicated with anyone on that cell phone  
2 since this deposition began?

3 A. No.

4 Q. Do you have any other devices, communication devices  
5 within arm's reach?

6 A. My office phone for which I'm using right now to  
7 communicate.

8 Q. You're using your office phone to communicate  
9 through Zoom, right?

10 A. Yes.

11 Q. How many -- well, if your office is taking that  
12 picture, it's better than my very expensive computer here.  
13 I take it you have a desk top or is this a laptop that I'm  
14 seeing you through?

15 A. I'm utilizing a laptop.

16 Q. Okay. How many computers do you have in your office  
17 right now?

18 A. I have one computer.

19 Q. That's the laptop that you're using to Zoom in on,  
20 right?

21 A. Correct.

22 MR. JONES: Comfort break?

23 MS. PETERSEN: Okay.

24 (Brief recess.)

25 Q. Now, Ms. Prockish, when we took a break, we were

00034

1 talking about the creation of the Disaster Relief Policy. I

2 want to take you back to that. Who is the author of the

3 Disaster Relief Policy as originally written?

4 A. It was a collaborative effort between people

5 services and myself.

6 Q. Okay.

7 A. Once it was drafted, it was sent to legal for

8 review.

9 Q. So it was a collaborative effort by people services

10 and yourself, okay. Why were you involved in it?

11 A. I was involved as it related to the way in which

12 teammates were going to be compensated.

13 Q. Okay. Well, I would like the details of that,

14 please. Let's go to page 49 of the exhibit. [\*\*]

15 MS. PETERSEN: Sorry. Is this the 2020 -- is this

16 Exhibit 5? I'm not sure which exhibit this is.

17 MS. HENRY: This is exhibit 5.

18 MS. PETERSEN: Okay.

19 MR. JONES: And this is the dated effective January

20 20, 2020.

21 MS. PETERSEN: For January 1, 2020, okay. Thank

22 you.

23 MR. JONES: January 1, 2020.

24 Q. So you say this is a collaborative effort between

25 yourself and people services. That doesn't really help me

00035

1 to understand who wrote this, okay. Did you write any part  
2 of the Disaster Relief Policy as it was originally  
3 configured?

4 A. As indicated, it was a collaborative effort in the  
5 --

6 Q. What does that mean? I'm sorry. I didn't mean to  
7 cut you off. Were you finished?

8 A. The collaborative effort indicates that the verbiage  
9 was created and reviewed as a team. I believe people  
10 services took the lead at that time on the majority of the  
11 policy. However, when it came to the area that speaks to  
12 how teammates are compensated, I was involved in the  
13 drafting of that verbiage.

14 Q. I would like to know -- all I've been provided is  
15 the DaVita Disaster Relief Policy effective January 1, 2020  
16 and then one effective after that because there was an  
17 addition of that paragraph. This is the one of January 1,  
18 2020. And my question is this, is this Disaster Relief  
19 Policy different than the original Disaster Relief Policy  
20 that you participated in drafting?

21 A. Yes. There has been an addition to this policy  
22 since it was originally implemented in 2017.

23 Q. Okay. Can you tell me what addition was made to the  
24 policy?

25 A. The information related to the volunteer travelers,

00036

1 which I believe is on page 51 towards the tail end.

2 Q. That's 51. Let's back up to 50.

3 A. It is the third to last paragraph that has been

4 added.

5 Q. Is that that paragraph that is highlighted?

6 A. Yes.

7 MR. JONES: Christina, let's highlight that

8 paragraph and if we can highlight it -- there you go. Thank

9 you.

10 Q. So it says, [\*] non-extent traveling teammates, as

11 part of the disaster relief volunteer group who provide

12 shift coverage at sites assigned by local leadership will be

13 paid a 50 percent premium for all compensable straight time

14 hours, including travel time. That paragraph is highlighted

15 on Exhibit 5. Was not in the original version of the

16 Disaster Relief Policy; is that correct?

17 A. That is correct.

18 Q. All right. Other than that paragraph that we have

19 highlighted on Exhibit 5 of page 50, were there any changes

20 to the Disaster Relief Policy from the point that it was

21 originally drafted and adopted by DaVita until at least

22 January 1 of 2020?

23 A. To my knowledge, no substantive changes were made.

24 Q. Okay. Now, this is what I want to do now. I want

25 you to look through this policy, Disaster Relief Policy, and

00037

1 I want you to tell me what parts of this Disaster Relief

2 Policy that you drafted in 2017?

3 A. As indicated, it was a collaborative effort and we  
4 developed the policy together and so I would have provided  
5 feedback and verbiage as it related to PTO requirements as  
6 well as the compensation section.

7 Q. Okay. We're going to use feedback and verbiage. I  
8 want you to tell me -- is there any feedback reflected in  
9 the Disaster Relief Policy found at pages 49 and 50 of  
10 Exhibit 5?

11 A. I don't understand the question. Would you please  
12 rephrase?

13 Q. I asked you to identify what portions of the  
14 Disaster Relief Policy originally that you drafted. Your  
15 response was, this was a collaborative effort. I provided  
16 feedback and verbiage for certain parts of the Disaster  
17 Relief Policy. Now, it's no secret. I'm trying to identify  
18 what words on these pages that you would say were your words  
19 -- or that rather you drafted. But I'm going to go through  
20 and I'm going to be very careful about the terms because  
21 you're very careful about the terms. And I'm going to use  
22 the terms that you used and we're going to identify whether  
23 that the feedback that you gave is in connection with the  
24 Disaster Relief Policy as found on pages 49 and 50. Is that  
25 feedback found on 49 or 50 of Exhibit 5?

00038

1 A. I don't recall exactly where my feedback was  
2 provided in 2017.

3 Q. All right. Let's talk about the verbiage, the  
4 verbiage that you provided. Is that verbiage reflected on  
5 pages 49 and 50 of Exhibit 5?

6 A. Again, I don't recall the exact verbiage I provided.  
7 It may have been in a draft and then subsequently changed  
8 when the policy was published once it was reviewed by the  
9 legal time.

10 Q. Well, okay. Do you see -- I didn't ask you for the  
11 exact verbiage, okay, so I'm going to ask you a different  
12 question. Do you recognize anything on pages 49 or 50 of  
13 Exhibit 5 that you think might have been the verbiage that  
14 you contributed to the Disaster Relief Policy that was  
15 originally created?

16 A. Yes.

17 Q. Okay. See, we're making progress. Now, I want you  
18 to identify that for me, please.

19 A. That area would have included when a teammate was  
20 responsible for utilizing PTO.

21 Q. What we're going to do is because this document is  
22 not in front of you.

23 MR. JONES: Christina, if you could back it up,  
24 please, to 49. Thank you.

25 Q. Now, you see under 4.12, Disaster Relief Policy, I



00039

1 want you to look at those words on page 49. Do you  
2 recognize anything that -- or do you see anything that you  
3 would recognize as being your verbiage that you contributed  
4 to the Disaster Relief Policy that was originally drafted?

5 A. No.

6 Q. Let's go to page 50, please. Now, page 50 at the  
7 top left-hand corner, you'll see there's a part of the  
8 paragraph, a full paragraph that is above, that is on top of  
9 the emergency time frame. Do you understand what I'm  
10 talking about?

11 A. Yes.

12 Q. Do you see any of the verbiage that you might have  
13 contributed that is contained in the words in that section?

14 A. No.

15 Q. Let's go to the section called emergency time frame.  
16 Do you recognize any of your verbiage that's reflected in  
17 that section titled [\*] emergency time frame?

18 A. No.

19 Q. Let's go to [\*] pay practices for non-exempt  
20 teammates and we're going to focus first on those words that  
21 are in the left column. Do you see any of your -- any of  
22 those words that reflect your verbiage that you contributed  
23 to the Disaster Relief Policy?

24 A. [\*] Regularly scheduled hours at their base hourly  
25 rate of pay.

00040

1 Q. Okay. So I'm going to underline this on my copy.

2 So you contributed these words and that would be in the

3 first full paragraph under pay practices for non-exempt

4 teammates, true?

5 MS. PETERSEN: Counsel, objection. It misstates

6 prior testimony. She didn't say she contributed those

7 words.

8 MR. JONES: Do you want me to swear you in? Then I

9 would ask you to stop testifying and stop coaching the

10 witness. It is absolutely a violation of the local rules.

11 MS. PETERSEN: I strongly disagree, but my objection

12 still stands.

13 Q. Ms. Prockish, let's go back and look at the first

14 paragraph under [\*] pay practices for non-exempt teammates.

15 But before we go there, during the break did you speak with

16 anyone, either remotely or directly?

17 A. Yes.

18 Q. Who did you speak with?

19 A. Counsel.

20 Q. Which counsel? Name the counsel by name.

21 A. Chelsea and Colleen.

22 Q. Chelsea and Colleen, the same Chelsea and Colleen

23 that are on this Zoom call?

24 A. Yes.

25 Q. Do they tell you anything?

00041

1 MS. PETERSEN: Objection, attorney-client privilege.

2 I'm instructing the witness not to answer.

3 Q. I'm not asking you what they told you. I'm asking  
4 you if they told you something.

5 MS. PETERSEN: That wasn't the question.

6 Go ahead.

7 MR. JONES: But it is a question now, Counsel. Now  
8 let's not argue on the record.

9 Q. I'm asking you if they told you something. Did  
10 they?

11 A. Yes.

12 Q. All right. Were you shown any documents, either  
13 electronically or remotely?

14 A. No.

15 Q. Now, did -- what is it that these two lawyers told  
16 you during this comfort break during this deposition?

17 MS. PETERSEN: Objection. Do not answer that  
18 question, attorney-client privileged information.

19 Q. Did they relay to you any facts?

20 MS. PETERSEN: Same objection.

21 Do not respond.

22 Q. Are you refusing to respond? I'm not picking on  
23 you, Ms. Prockish. It's just we have to make a record that  
24 counsel has instructed you not to answer and that you're not  
25 answering on behalf of counsel. You're not in trouble.

00042

1 It's just purely something we have to do. Okay? So I'm  
2 going to ask you this question, do you refuse to answer my  
3 question?

4 A. Based on counsel's advice, I am not answering the  
5 question.

6 Q. Thank you. Now, did anything that these two lawyers  
7 told you during the break, did it refresh your memory? I'm  
8 not asking what they told you. I'm asking whether you heard  
9 something from them that refreshed your memory?

10 A. No.

11 Q. Did they tell you not to answer any questions?

12 MS. PETERSEN: Objection.

13 Do not answer that question. Attorney-client  
14 privilege.

15 Q. Are you refusing to answer upon the instruction of  
16 counsel?

17 A. Yes.

18 Q. Do you have any type of messenger, or something  
19 similar to that, on your laptop?

20 A. Yes.

21 Q. Have you been in communication with either one of  
22 these two counsel during the course of this deposition  
23 through any certain messaging service or any type of  
24 communication device during the course of this deposition?

25 A. No, I have not.

00043

1 Q. Now, we were talking about pay practices for  
2 non-exempt teammates, and that's the first paragraph under  
3 pay practices for non-exempt teammates.

4 MR. JONES: Christina, if you don't mind, let's  
5 unhighlight that paragraph so that the only highlighted  
6 paragraph will be -- let's go to the next page.

7 MS. HENRY: Do you want to be on 50 or 49?

8 MR. JONES: Fifty, please.

9 MS. HENRY: Oh, sorry. So you want me to take these  
10 off, okay.

11 MR. JONES: The one that was highlighted was the one  
12 that was added after the original --

13 MS. HENRY: Okay.

14 MR. JONES: Let's leave that one highlighted,  
15 please. Thank you. So now we know what was the original  
16 verbiage.

17 Q. Let's go to the first paragraph under [\*] pay  
18 practices for non-exempt teammates. Tell me what words in  
19 that paragraph reflect your verbiage that you believe you  
20 contributed to the original version of the Disaster Relief  
21 Policy?

22 A. The regularly scheduled hours at their base rate of  
23 pay looks like verbiage I would have contributed.

24 Q. Let's go to the next full paragraph which spills  
25 over into the next columns that begins, [\*] if a facility.

00044

1 Do you see any verbiage that you would have contributed to  
2 the policy?

3 A. [\*] Regularly scheduled hours.

4 Q. Anything else?

5 A. No.

6 Q. All right. Now if we look at the next full  
7 paragraph. It is on the right-hand column. It begins, [\*]  
8 if a designated facility or business office. Any verbiage  
9 you provided in that paragraph?

10 A. The verbiage that appears, I would have contributed  
11 to is [\*] Scheduled hours will be paid premium pay for all  
12 hours worked. Premium pay will be at one-and-one-half times  
13 the teammate's base rate of pay.

14 Q. Start over again, please. I'm going to underline it  
15 on my copy.

16 A. [\*] Scheduled hours will be paid premium pay for all  
17 hours worked. And then again [\*] premium pay will be  
18 one-and-one-half times the teammate's base rate of pay.

19 Q. And so let's go to the next paragraph. That is the  
20 paragraph that was added later, right?

21 A. Yes.

22 Q. That is later than 2017, true?

23 A. Correct.

24 Q. Did you draft that paragraph?

25 A. It was a collaborative effort, again, with people

00045

1 services, myself, and Amy [Gimnus], payroll support manager.

2 Q. Let's go to an alternate paragraph in this policy

3 that's next to last that begins, [\*] if a designated. Do

4 you recognize any of your verbiage in that paragraph?

5 A. No.

6 Q. The last paragraph starting, [\*] non-exempt

7 teammates. Do you recognize any of your verbiage in that

8 paragraph?

9 A. Yes. [\*] Teammates must report time worked via

10 timestamps in the timekeeping system and will be paid

11 accordingly.

12 Q. So we have gone over every paragraph in the Disaster

13 Relief Policy. Do you recognize any words that reflect any

14 feedback that you gave regarding the original Disaster

15 Relief Policy?

16 A. I don't recall.

17 Q. Well, it's a little different question than that.

18 Let me reask it again if you don't mind, okay.

19 Do you recognize any words in the Disaster Relief

20 Policy that reflect your feedback that you may have given

21 during the original drafting of this policy?

22 A. No verbiage is standing out to me.

23 Q. Okay. I'm going to take that to mean that you don't

24 recognize any words in the Disaster Relief Policy that

25 reflects your feedback. Now, if I'm incorrect, I'm going to

00046

1 give you the opportunity to correct. Am I incorrect?

2 A. No, you are not incorrect.

3 Q. Thank you. So I'm looking at a handful of words

4 here that you recognize and attribute to this. So who would

5 have created or would have been responsible for the rest of

6 the words in the Disaster Relief Policy?

7 MS. PETERSEN: Objection, asked and answered. You

8 can answer if you can.

9 A. People services.

10 Q. People services is a title of an organizational

11 section of a fictitious person, I can't take people services

12 and put them under oath and ask people services questions.

13 I'm looking for people of people services. I'm going to ask

14 it again and I'll it a little bit differently so it will be

15 clear.

16 What other people contributed to the words in the

17 Disaster Relief Policy that we see here as Exhibit 5 besides

18 yourself?

19 MS. PETERSEN: Objection, asked and answered. You

20 can answer if you can.

21 A. I do not have teammate name of those that

22 contributed to this policy.

23 Q. You can't remember one; is that your testimony?

24 A. As indicated before, I believe Jeff Reib may have

25 contributed to this verbiage. I was not in the room or on



00047

1 the conference call when this language was originally  
2 drafted and subsequently made it to the policy after review  
3 by our legal team.

4 Q. How do you know it was reviewed by your legal team?

5 A. It is our standard practice that all policies --

6 Q. I'm sorry. Start over because I hadn't finished my  
7 question. I did hesitate and I understand why you started  
8 talking. I'm sorry. I stepped on the whole thing. I'm  
9 going to start over again.

10 How do you know whether it was reviewed by your  
11 legal team? Did you send it to them?

12 A. No, I did not.

13 Q. You said something about standard policy. Is it  
14 standard policy that any changes or additions or creation of  
15 the Disaster Relief Policy will be reviewed by your legal  
16 counsel?

17 A. All teammate policies are reviewed by legal counsel  
18 before publication.

19 Q. How do you know that?

20 A. That is the process that I have been advised of by a  
21 teammate in people services.

22 Q. Who advised you of that?

23 A. Alejandro and I don't know his last name.

24 Q. Alejandro?

25 A. Um-hmm.

00048

1 Q. And when were you advised that?

2 A. During the course of my employment.

3 Q. Six-and-a-half years. Let's see if we can narrow it  
4 down. Were you advised that this year?

5 A. In 2021, no.

6 Q. How about in 2020?

7 A. I don't specifically recall.

8 Q. Did you have an orientation when you were hired  
9 six-and-a-half years ago?

10 A. Yes. I did go through new hire orientation.

11 Q. Were you informed then that all changes to the  
12 policies would be reviewed by counsel?

13 A. That was six-and-a-half years ago. I don't  
14 specifically recall.

15 Q. Okay. So how do you know it was reviewed by  
16 counsel? I mean you said, that's what the policy is. But  
17 you stated it as a fact. Do you know that as a fact?

18 A. I have not seen anything in writing indicating that  
19 that is our policy, but I have taken the word of those that  
20 support the policy as it is the fact.

21 Q. Okay. And that is -- give me the name again,  
22 please?

23 A. Alejandro.

24 Q. And what is Alejandro's position?

25 A. I don't know his particular title.

00049

1 Q. How would it be that he would come to explain to you  
2 that it is the policy that all personnel policies are  
3 reviewed by counsel before they're published?

4 MS. PETERSEN: Objection, misstates prior testimony.

5 Q. That was your testimony, wasn't it, or did I  
6 misunderstand. Your understanding is that before these  
7 policies were published, they're reviewed by counsel, right?

8 A. Correct.

9 Q. Okay. Now, how is it that Alejandro came to tell  
10 you that?

11 A. DaVita goes through a process of review and updating  
12 policies twice a year and Alejandro is the one that  
13 facilitates that review for those responsible for each  
14 policy.

15 Q. It was -- okay. I understand that. You've  
16 explained the review process, some of it, anyway. We'll go  
17 into that in a minute. But my question was a little  
18 different. My question is how did Alejandro come to tell  
19 you that; that, you know, all of these policies were  
20 reviewed by counsel before they're published?

21 A. That information would have been contained in an  
22 email provided by Alejandro.

23 Q. Say it one more about that. Why would you have  
24 received an email from Alejandro with that information?

25 A. Alejandro would have been defining the process. So

00050

1 once the policy owners and co-owners had an opportunity to  
2 review and provide suggested changes to said policies, then  
3 it would go to legal for review prior to publishing.

4 Q. Well, okay. I still -- I understand and thank you  
5 for telling me that. We're going to get into that a little  
6 bit later. Was Alejandro announcing a new DaVita policy to  
7 you? Was that why you got that email?

8 A. The information would have been contained in our  
9 an -- or in the regular review process of policies by policy  
10 owners and co-owners.

11 Q. What is a policy owner?

12 A. A policy owner is the person who is responsible for  
13 review and suggested edits to a policy. Generally, it's the  
14 teammate with the technical knowledge or the subject matter  
15 expert to help enforce the policy.

16 Q. Go over that again. I want to write it down and I  
17 want to use the same words when I ask these questions, okay.  
18 If you don't mind, I realize I asked you this again. But  
19 I'm going to ask you to repeat it one more time.

20 So a policy owner, what's the significance of that  
21 again?

22 MS. PETERSEN: Objection, asked and answered.

23 Go ahead.

24 A. Is a teammate who has the technical knowledge for  
25 the subject matter expert over the policy area.

00051

1 Q. Is it the co-owner?

2 A. Co-owner would be a teammate who would assist in the  
3 updating of the policy because they have working knowledge  
4 and can contribute to the policy.

5 Q. Okay. Who is the owner of the Disaster Relief  
6 Policy?

7 A. I am the current owner of the Disaster Relief  
8 Policy.

9 Q. How long have you been the owner of the Disaster  
10 Relief Policy?

11 A. I don't know when I was deemed the owner of the  
12 policy.

13 Q. All right. Well, were you deemed the owner of the  
14 policy when it was adopted in 2017?

15 A. I don't recall.

16 Q. Well, if I wanted to know that, how would I find  
17 out?

18 A. You would need to inquire with the people services  
19 team that tracks the owners of policies.

20 Q. How does the people services track the owners of the  
21 policies?

22 A. I'm not aware of their process for tracking.

23 Q. Well, being the owner of the Disaster Relief Policy,  
24 do you provide support services in case someone has a  
25 question about the Disaster Relief Policy?

00052

1 A. Yes. I do answer questions if a teammate inquires  
2 about the policy.

3 Q. How will a teammate know that you're the owner of  
4 the policy to make the inquiry?

5 A. They do not, so I have educated my teams on the  
6 Disaster Relief Policy. And if there's any questions  
7 they're not able to answer, then they come to me.

8 Q. Well, here's my question, the organizations that  
9 hire 56,000 people roughly in the United States and they  
10 find their way back to DaVita, how are those 56,000 people  
11 supposed to know who to ask if they have a question about  
12 the Disaster Relief Policy?

13 A. They utilize their resources; one of which is the  
14 payroll service center to have policy questions answered or  
15 the teammate support center, which is part of people  
16 services --

17 Q. So there's teammate -- I'm sorry. I stepped on you.  
18 Finish the last part, please.

19 A. I said to receive guidance.

20 Q. Okay. So the teammate support center, is there why  
21 the teammates go to ask questions and they just send  
22 somebody a an email or something like that?

23 A. The teammate support center answers certain  
24 questions that a teammate may have about policy regarding  
25 entries in our HCM system; they answer a wide variety of

00053

1 teammate-related questions.

2 Q. Well, if someone asks a question about the Disaster  
3 Relief Policy, will the teammate support center then relay  
4 that question to you?

5 A. If they are not able to answer it on their own or  
6 they may refer them to teammate relations or our wage an  
7 hour team.

8 Q. Who's the wage an hour team?

9 A. Shawn Zuckerman is part of the wage an hour team.

10 Q. Okay, part. Who is the rest of it?

11 A. The teammates on that team have changed over a  
12 period of time. Are you asking me who is on that team  
13 presently or in the past?

14 Q. Who is on it presently?

15 A. I'm sorry. I didn't hear your response.

16 Q. Who is on it presently?

17 A. Shawn Zuckerman and Liliana Pascal.

18 Q. So you indicated that you have a service center for  
19 questions under your directorship, right?

20 A. Yes.

21 Q. What is that service center for questions called?

22 A. Can you repeat the question?

23 Q. What is that service center for questions called?

24 A. Am I hearing the question correctly? What is the  
25 service center questions called?

00054

1 Q. I wrote down your answer right here and circled it  
2 in red. I asked you, one of the things that you said is  
3 that you have a service center for questions; that's how you  
4 described it.

5 A. Yes.

6 Q. You are very, very careful with your words, so I'm  
7 trying to accommodate you and try to use the words that you  
8 use to describe things. So the way you described it is that  
9 you have a service center for questions under your  
10 directorship -- I used that word, directorship. My question  
11 to you is this, what is that service center for questions  
12 called?

13 A. Payroll service center.

14 Q. Have you ever had questions about the Disaster  
15 Relief Policy directed to you by teammates through the  
16 payroll service center?

17 A. I can't say for one hundred percent certainty that a  
18 teammate question has come to me through the service center.  
19 I would have to do look at our call log.

20 Q. What do you think?

21 MS. PETERSEN: Objection, calls for speculation.

22 MR. JONES: I'm not asking her to speculate. We're  
23 think people here.

24 Q. I just want to know what do you think. Do you think  
25 you received some of those calls or not?



00055

1 A. I do not personally receive a call, no.

2 Q. And see, that's where you're very careful with your

3 words. I'm going to be very careful. As the director of

4 payroll under whose directorship falls the payroll services

5 center, do you think you got questions from teammates about

6 the Disaster Relief Policy? You being --

7 A. Probably.

8 Q. Probably, okay. Why do you think that?

9 A. If one of the service center representatives was not

10 able to address the teammate's question, then it could have

11 been escalated to me for review.

12 Q. Do you remember any such escalation?

13 A. Not directly, no.

14 Q. What do you mean not directly? We can only remember

15 things directly because we're dealing with our own memory so

16 that confuses me. Would you mind saying more about that?

17 A. I don't recall.

18 Q. Now tell me about this call log.

19 A. All calls that come into the payroll service center

20 are logged utilizing a system called Service Now.

21 Q. Say again. Service what?

22 A. Service Now, N-O-W.

23 Q. Okay. And what happens to them when they log in?

24 A. A ticket is created on behalf of the teammate. If

25 the service center representative is able to address the

00056

1 teammate's question or concern, it is then closed. If  
2 they're not able to resolve it, then the ticket is forwarded  
3 to the appropriate team or teammate to address the question  
4 or issue.

5 Q. Okay. So if you wanted to know how many -- or if  
6 any teammates directed the questions towards the Disaster  
7 Relief Policy in the year 2020, how would you go and find  
8 that information?

9 A. One I would have to determine if we have a category  
10 within service now that captures that specific policy as a  
11 category. If not, then we would have to look through the  
12 Service Now ticket headers, comments to determine if the  
13 question is related to the Disaster Relief Policy.

14 Q. Tell me about these tickets. When you say tickets,  
15 I think of speeding tickets, which is the bane of my  
16 existence, and I get that on paper. Are your tickets on  
17 paper?

18 A. Are tickets are stored electronically within the  
19 service now application.

20 Q. Are they searchable?

21 A. Yes.

22 Q. Who has authority to change the Disaster Relief  
23 Policy?

24 A. As policy owner, I have that ability along with  
25 individuals in people services such as the chief people

00057

1 officer, wage an hour team, our legal team.

2 Q. Okay. Along with individuals in people services,

3 right; is that what you said?

4 A. Yes. I gave an example of a teammate within -- or

5 the chief people officer. And I also gave an example of the

6 team such as the wage an hour team that make changes to the

7 policy.

8 Q. Give me a name who. Is the chief people officer?

9 A. Our present chief people officer is Kenny Gardner.

10 Q. Can Mr. Gardner change the Disaster Relief Policy

11 without consulting with you?

12 MS. PETERSEN: Objection, misstates facts not in

13 evidence. Actually, misstates prior testimony to the extent

14 that's what it is.

15 MR. JONES: Hang on. I'm older than that, all

16 right. That is not an objection. That's an instruction to

17 the witness. I asked her a question. I didn't misstate her

18 testimony. We haven't heard her testimony, all right. I

19 would appreciate it if you would please stop doing that.

20 All right?

21 Now, Madam Court reporter, would you read the

22 question back, please.

23 MS. PETERSEN: One moment, please, before you do

24 that, Christina, my apologizes. I misstated the objection

25 that I wanted to make with that last comment. I apologize.

00058

1 What I was trying to get out was that it assumes facts not  
2 in evidence. I think I garbled my objection but that is my  
3 objection.

4 MR. JONES: How could a question to a witness assume  
5 facts?

6 MS. PETERSEN: My objection stands.

7 MR. JONES: I didn't ask her if she stopped beating  
8 your husband, okay.

9 Read the question back, please.

10 MS. PETERSEN: Can we take a break, please, so we  
11 can have a conversation off the record.

12 MR. JONES: We can. Why don't you call me on cell  
13 phone?

14 MS. PETERSEN: No, I'm not going to call you on your  
15 cell phone. We can just do this briefly right here.

16 (Discussion off the record.)

17 MS. PETERSEN: I'm just wanting the record to  
18 reflect that while we were off the record immediately  
19 preceding my objection was reread and I now understand the  
20 phrasing of the question so I withdraw my objection.

21 MR. JONES: Thank you.

22 Madam Court Reporter, would you read the question  
23 back, please.

24 (Reporter read back as requested.)

25 A. Yes.

00059

1 Q. Has anyone ever changed the Disaster Relief Policy  
2 without consulting with you?

3 A. No.

4 Q. Were you consulted when the latest change to the  
5 Disaster Relief Policy -- no. Bad question. I will  
6 withdraw that.

7 Were you consulted when the paragraph found in the  
8 current Disaster Relief Policy in that paragraph titled [\*]  
9 COVID-19 Crisis, were you consulted before that paragraph  
10 was put into the Disaster Relief Policy?

11 A. Yes.

12 Q. Okay. Whose idea was it to make that change, to add  
13 the COVID-19 Crisis paragraph?

14 A. I do not know the specific teammate who requested  
15 the update.

16 Q. All right. Who consulted with you regarding that  
17 update that you called it?

18 A. I don't recall the teammate.

19 Q. Male or female?

20 A. I don't recall. It would have been via email.

21 Q. Do you still have that email?

22 A. I may.

23 Q. What's the retention policy for emails?

24 A. It depends on the context of said email.

25 Q. Say more about that.

00060

1 A. Our village record retention policy, there is a  
2 schedule for which we are to follow based on the contents of  
3 the email. We're not required to keep drafts of documents.

4 Q. Of documents or emails?

5 A. Emails which may contain documents.

6 Q. You're not required to keep them? Are you allowed  
7 to keep drafts of documents?

8 A. Yes, we are allowed.

9 Q. Did you receive a draft of the COVID-19 Crisis  
10 update to the Disaster Relief Policy?

11 A. Yes, I believe so.

12 Q. Okay. Did you keep that draft?

13 A. I don't know without looking in my email.

14 Q. Well, how many drafts do you recall receiving of the  
15 COVID-19 crisis paragraph that changed the Disaster Relief  
16 Policy?

17 A. I don't recall the number of drafts I may have been  
18 emailed.

19 Q. Do you recall whether it was more than one draft?

20 A. No, I do not recall.

21 Q. Do you recall whether it was a hundred drafts?

22 MS. PETERSEN: Asked and answered.

23 Q. I didn't ask about a hundred. Do you recall whether  
24 it was a hundred drafts?

25 A. No, I do not recall it was a hundred drafts.

00061

1 Q. Do you think that it was a hundred drafts?

2 A. No, that would be excessive to me.

3 Q. Do you think it was one draft?

4 A. At least one.

5 Q. It could have been more, true?

6 A. It could have been more, yes.

7 Q. Did you have any input into the language of the

8 update called COVID-19 Crisis?

9 A. No.

10 Q. Not your verbiage, not your feedback; is that true?

11 A. Not my verbiage. And if I provided feedback, I

12 didn't provide changes.

13 Q. I'm sorry. I'll just take a second. So do you know

14 why the COVID-19 Crisis paragraph was added to the Disaster

15 Relief Policy?

16 MS. PETERSEN: I'm going to insert a comment here

17 for the witness that I'm instructing you not to answer to

18 the extent that that would require you to disclose

19 attorney-client privileged communications.

20 Q. Let me just make this real clear what I'm asking.

21 I'm asking you if you know why the paragraph known as

22 COVID-19 Crisis was added to the Disaster Relief Policy.

23 I'm not asking you the substance. I'm asking you if you

24 know.

25 A. My understanding was to provide clarity to

00062

1 teammates.

2 Q. Where did you gain that understanding?

3 A. Based on the communication that was distributed to

4 teammates.

5 MR. JONES: Christina, may we put up Exhibit 7,

6 please. [\*]

7 [Shares screen]

8 Q. Ms. Prockish, You'll see on the bottom right-hand

9 corner of what we're going to attach to your deposition as

10 Exhibit 7. This is a 3-page document that has been

11 previously marked as TRC000152 through 154. This was

12 produced to us by TRC, Total Renal Care. Have you ever seen

13 this document before?

14 A. Yes.

15 Q. And help me understand how you came to see this

16 document.

17 A. This is the document that was distributed to

18 teammates village wide providing clarity on the Disaster

19 Relief Policy.

20 Q. Do you see this document before it was disseminated

21 village wide?

22 A. No.

23 MR. JONES: Go to 153, please, Christina.

24 MS. HENRY: Okay.

25 Q. This is TRC000153. Have you seen this document



00063

1 before?

2 A. That document appears to be the updated verbiage

3 added to the teammate policy 4.12.

4 Q. Did you see this document before it was distributed

5 village wide?

6 A. No.

7 Q. Do you see any language in this document before it

8 was distributed village wide?

9 A. The information -- no.

10 Q. Next page, please. Same questions as before. Are

11 you familiar with this document?

12 A. That appears to be the latter half of policy 4.12 .

13 Q. Did you see any of the language in this latter half

14 of Policy 4.12 before it was disseminated village wide?

15 A. In this communication, no.

16 Q. Did you see it in any communication before it was

17 disseminated village wide?

18 A. No.

19 Q. Well, let's go back to this Kenny Gardner. You told

20 me that Mr. Kenny Gardner has the authority to change the

21 Disaster Relief Policy without your input or without your

22 permission; is that true?

23 A. To my knowledge, yes.

24 Q. Why did you qualify that to your knowledge? I'm

25 curious?

00064

1 A. No particular reason.

2 Q. Okay. Now, who else besides Ken Gardner may change  
3 the Disaster Relief Policy without your input?

4 A. Our legal team.

5 Q. Who is that?

6 A. That is a group of attorneys that support DaVita.

7 Q. Do you got any names?

8 A. Colleen Ludwig, who is on this call; Dale Boland;  
9 Caitlin Moughon; Ashley McAteer; [Brian Sarmey].

10 Q. Tell me how the process works. Let's go back to the  
11 original adoption of the Disaster Relief Policy. Once in  
12 2017, once that policy went through all the vetting, etc.,  
13 who has the final word on whether the Disaster Relief Policy  
14 would be adopted by DaVita?

15 A. I would have to say our legal team. I don't know if  
16 there are other teammates that sit on a potential committee  
17 or not. I don't know if it's one group of individuals or if  
18 it's a collaborative effort.

19 Q. It wouldn't be you, right?

20 A. No, it would not have been me.

21 Q. So let's go back to again about you were consulted  
22 about the changes to the Disaster Relief Policy that added  
23 the section titled COVID-19 Crisis. Was that your previous  
24 testimony? Am I remembering it correctly?

25 A. Yes.

00065

1 Q. And did you make any suggested changes to the  
2 COVID-19 Crisis paragraph?

3 A. Not that I recall.

4 Q. And, again, you don't recall who consulted you on  
5 these changes; is that true?

6 A. Correct.

7 Q. And you don't know who drafted the COVID-19 Crisis  
8 paragraph; is that true?

9 A. True.

10 Q. If I wanted to know -- or a better question is if  
11 you wanted to know, where would you start to find out?

12 A. I would have to --

13 MS. PETERSEN: Sorry. I didn't hear the first part  
14 of that question.

15 Q. I'll rephrase it. I'll move a little closer to the  
16 microphone.

17 If you wanted to know who was responsible for  
18 drafting the paragraph known as COVID-19 Crisis that  
19 ultimately was updated into the Disaster Relief Policy, if  
20 you wanted to know who the author was, where would you go to  
21 find out? How would you do it?

22 A. I would start with Alejandro.

23 Q. Okay. Why would he know?

24 A. He is my contact for policies when they're updated.

25 Q. What's his title again?

00066

1 A. I don't know Alejandro's title.

2 Q. Is he in the same building as you?

3 A. No, sir.

4 Q. Do you know where he's located?

5 A. I presume he's located in Denver.

6 Q. Does the pay versions of the Disaster Relief Policy,  
7 have they ever been implemented to your knowledge?

8 A. Would you please repeat the question? I didn't hear  
9 the first part clearly.

10 Q. Can you hear me better now?

11 A. Thank you.

12 Q. To your knowledge, has the pay versions of the  
13 Disaster Relief Policy ever been implemented?

14 A. I don't understand the question. I apologize.

15 Q. That's okay. That's what I want you to do.

16 MR. JONES: Christina, could we put Exhibit 5 back  
17 up, please.

18 [Shares screen]

19 Q. Okay. We see --

20 MR. JONES: Let's go to page 50, please.

21 Q. This is the Disaster Relief Policy and this is the  
22 one -- not to confuse you -- this is the policy from January  
23 before the paragraph titled COVID-19 Crisis was put into the  
24 policy, okay. Do you follow me?

25 A. Following.

00067

1 Q. All right. And it says here, [\*] pay practices for  
2 non-exempt teammates. Do you see that?

3 A. Yes.

4 Q. Has that changed since this policy was implemented  
5 in 2017 other than the paragraph that's highlighted?

6 A. Can I ask the question?

7 Q. I'm not trying to trick you. I realize that above  
8 it now there's another paragraph and that's why I'm asking  
9 you and made a point of making reference to the date of this  
10 policy. So I'm not trying to trick you, okay. I realize  
11 that it doesn't have the COVID-19 Crisis paragraph in it.  
12 That's your concern, I think.

13 But my question --

14 A. So --

15 Q. Certainly you may ask a question. I didn't mean to  
16 avoid that?

17 A. When you ask if there's a change, if there is a  
18 punctuation change or a word change, I have not compared  
19 this document against the previous documents to one hundred  
20 percent say that a change has not been made.

21 Q. Somebody might have tidied it up a little bit. I  
22 understand. Thank you. I tell you that I appreciate that  
23 more than I can say. I'll ask you a better question that I  
24 think you'll be more comfortable with, okay.

25 When you look at pay practices for non-exempt

00068

1 teammates has there been any substantive change to this  
2 policy, the portion of the policy since it was implemented  
3 in 2017 other than the paragraph that is highlighted on  
4 Exhibit 5?

5 A. No.

6 Q. Thank you. Now, who is it that has the  
7 responsibility of interpreting the Disaster Relief Policy?

8 A. Again, it's a collaborative effort amongst teams;  
9 payroll, wage an hour, and our legal team.

10 Q. To interpret it?

11 A. Yes.

12 Q. Okay. So if someone has a question about the  
13 Disaster Relief Policy and they direct it to your  
14 directorship, do you consult with legal on every question?

15 A. Not on every question, no.

16 Q. Can you ever remember having a question placed to  
17 you about the interpretation of the Disaster Relief Policy  
18 where you consulted with legal before answering that  
19 question?

20 A. In the four years I can't say whether I have or not.

21 Q. Okay. Why did you -- well, what happened four years  
22 ago? You've been there six-and-a-half years. Did you gain  
23 ownership of this policy four years ago?

24 A. This policy was drafted and implemented in 2017.

25 Q. Thank you. Now the -- was there any type of

00069

1 Disaster Relief Policy before Section 4.12, the Disaster

2 Relief Policy, was implemented in 2017?

3 A. There was not a formal policy in our teammates

4 policy referencing disaster relief. As I previously

5 mentioned, there was a local pay practice.

6 Q. Okay. Do you know whether it was ever determined

7 whether the Disaster Relief Policy applied to the COVID-19

8 crisis -- and I'm talking about at any period before the

9 paragraph called COVID-19 Crisis was inserted into the

10 Disaster Relief Policy?

11 A. Would you please ask that question again, so I'm

12 clear.

13 Q. I'm talking about in the -- I'm talking about before

14 the paragraph titled COVID-19 Crisis was added to the

15 Disaster Relief Policy or, as you say, to clarify? Do you

16 know if at any time prior to the insertion of that paragraph

17 into the Disaster Relief Policy, had anyone at DaVita made a

18 determination that the Disaster Relief Policy did not apply

19 to the COVID-19 emergency?

20 A. Given that an emergency time frame was not

21 designated by local leadership or the governance council,

22 teammates were not paid under the Disaster Relief Policy as

23 they were --

24 Q. You didn't answer my question. I'm going to ask it

25 again.

00070

1 MR. JONES: Madam Court Reporter, would you read it  
2 back, please?

3 MS. PETERSEN: The witness was still speaking. She  
4 had not finished her answer.

5 Q. Did I cut you off? Please finish. I didn't mean to  
6 do that.

7 A. As teammates were able to perform their regular  
8 duties.

9 Q. Okay. So who told you that?

10 A. Who told me what?

11 Q. That the policy didn't apply because teammates were  
12 not prevented from doing their regular duties?

13 A. The crux of this policy determined how teammates are  
14 paid and so therefore when an emergency time frame is not  
15 designated by local leadership or the governance committee,  
16 the premium pay does not apply.

17 Q. Okay. That's your understanding, right? Or is that  
18 your interpretation of the words of the Disaster Relief  
19 Policy or is that someone else's interpretation that you  
20 just gave me?

21 A. That is mine. My interpretation and my  
22 understanding of the policy that in order to be paid a  
23 premium, an emergency time frame must be designated.

24 Q. Designated?

25 A. Yes.



00071

1 Q. Okay. Where do you get that out of the policy? Let  
2 me stop you right there. Is there somebody in your office  
3 with you?

4 A. Somebody walked by. I have windows and somebody  
5 waved to me as they were leaving for the day.

6 Q. All right. Is it part of your responsibility for  
7 you to interpret the emergency relief policy -- excuse me --  
8 the Disaster Relief Policy; is that true?

9 A. Interpret and apply, yes.

10 Q. Now, the reading of this policy that you just told  
11 me, you said that premium paid is not paid unless local  
12 leadership or the Disaster Governance Council designates an  
13 emergency time frame. Do you remember testifying to that?

14 A. Yes.

15 Q. My question is, where did you find that in the  
16 policy because I haven't found it anywhere. And I'm  
17 referring to the policy before, the insertion of the  
18 paragraph COVID-19 Crisis? Can you take me to it?

19 MS. HENRY: do you want me to put the other exhibit  
20 up that has that verbiage?

21 MR. JONES: No. I asked her to take me to it.

22 MS. HENRY: Okay.

23 Q. Do you see it on the page that's in front of you,  
24 TRC00050? Do you see it there, the language that you rely  
25 upon to reach that conclusion?

00072

1 A. Yes.

2 Q. Read it to me.

3 A. [\*] The emergency time frame and affected facility

4 or business office will be identified on a case-by-case

5 basis by local leadership, DVD, GVP and PSD and the Disaster

6 Relief Governance Council, dependent on the severity of the

7 disaster and location.

8 Q. But that's not what you told me, was it? You told

9 me that premium pay is not paid unless local leadership and

10 the Disaster Governance Council designates an emergency time

11 frame. That's not what the policy says, is it? It says [\*]

12 identify an emergency time frame, true?

13 A. The verbiage does indicate identified. I chose to

14 use the term designated as opposed to identify.

15 Q. Why did you chose to use the term designated as

16 opposed the word identify?

17 A. Designated comes more naturally to me than

18 identified in a sentence.

19 Q. Because it indicates that the local leadership and

20 the Disaster Governance Council has chosen a time frame, an

21 emergency time frame, right?

22 A. In order for the disaster relief, to apply an

23 emergency time frame must be identified.

24 Q. Okay. Well, the reason I bring that up, you're

25 making me be very careful with my words. It's okay. I'm

00073

1 not picking on you. This is an important area, all right.

2 So your understanding is that neither local

3 leadership nor the Disaster Governance Council identified a

4 emergency time frame thus no premium pay was due, correct?

5 A. Correct.

6 Q. Okay. How is it that when local leadership and the

7 Disaster Governance Council identifies an emergency time

8 frame, how is that identification transmitted to you -- and

9 by you, I don't mean you personally; but I'm referring to

10 you in your directorship?

11 A. We provide our people services director or manager

12 with a template to complete, which is in Excel. It

13 identifies the applicable site and the emergency time frame

14 that has been designated for that premium pay.

15 Q. Say that again. You provide a template for who to

16 complete?

17 A. For the local leaders to complete, it may be -- the

18 data may be combined into one spreadsheet by one particular

19 individual rather than having the GDP or DVP or PSD --

20 Q. I don't know what those letters mean, ma'am. I'm

21 sorry.

22 MS. PETERSEN: Please let her finish.

23 A. We receive an -- I'll start from the beginning --

24 Excel template completed and approved by the division vice

25 president or group vice president of the sites an emergency

00074

1 time frame designated for premium pay.

2 Q. Sites and time frame, right?

3 A. Begin and end date.

4 Q. Begin and end date, okay. Now who provides the

5 template to the local leaders?

6 A. I provide the template to the people services

7 manager or director that is working in that area and then it

8 is provided to local leaders.

9 Q. Okay. Well, I mean do they have this available or

10 someone calls you up and says, hey, we have got an emergency

11 and we need the template? How does it work?

12 A. The people services directors and managers will

13 reach out and ask for the template. Generally in a given

14 situation where there is a natural disaster, we are on calls

15 with the DaVita emergency management and people services on

16 that call as well. And so that template is discussed. If

17 an emergency time frame is to be designated, then they would

18 complete it.

19 Q. What is the template? What does it look like?

20 A. The Excel template allowed the field to communicate

21 with payroll which sites are eligible for the disaster pay

22 and for what date range.

23 Q. So how does the Disaster Governance Council fit into

24 this?

25 A. Since I do not sit on the Disaster Governance

00075

1 Council, I presume that they're working closely with a local  
2 leadership on reviewing and determining whether or not an  
3 emergency time frame designation is appropriate.

4 Q. Well, how do you know that the Disaster Governance  
5 Council has, if you will, signed off on their identification  
6 of the emergency time frame?

7 A. I do not have documentation that they have signed  
8 off on the emergency time frame.

9 Q. Does the Disaster Governance Council exist?

10 A. Yes.

11 Q. Who is on it?

12 A. I don't know the particular teammate. However, I do  
13 know that they recently met due to the Winter Storm Uri.

14 Q. How do you know that?

15 A. I was advised that they met.

16 Q. Who advised that?

17 A. I don't recall the particular teammate. I would  
18 have to review my email.

19 Q. Have you ever known anybody who sat on the Disaster  
20 Governance Council?

21 A. Yes.

22 Q. Who?

23 A. Caitlin Moughon.

24 Q. Spell the last name.

25 A. I'm going to butcher this. M-O-U-G-H-O-N, I

00076

1 believe.

2 Q. Who is she?

3 A. Vice president and general counsel over labor  
4 employment.

5 Q. So you don't really have any authority to interpret  
6 the Disaster Relief Policy, do you?

7 A. Yes, I believe I do.

8 Q. Okay. Can you determine when the Disaster Relief  
9 Policy will be implemented?

10 A. I do not have a final say on when it is implemented.

11 Q. Do you have any say in when it is implemented?

12 A. It is up to local leadership and the council when  
13 determining if teammates are eligible for disaster premium  
14 pay under the policy.

15 Q. Well, actually it doesn't say that, does it? The  
16 policy says that [\*] local leadership and the Disaster  
17 Governance Council will identify the emergency time frame,  
18 right? Right?

19 A. Yes, they're responsible for determining the time  
20 frame, emergency time frame.

21 Q. Determining or identifying?

22 A. Identify.

23 Q. And then if we go, for instance, to the next  
24 designation [\*] pay practices and non-exempt teammates, it  
25 says that, for example, [\*] if a facility or business office

00077

1 opens late or closes early due to a declared emergency or  
2 natural disaster as defined above, the teammates will be  
3 notified promptly of the approved opening and closing times.  
4 Non-exempt teammates to arrive or leave at the approved  
5 opening and close time, will be paid their hourly rate of  
6 pay for their regularly scheduled hours unless state law  
7 provides otherwise. It's not permissible. It says "will";  
8 isn't that right?

9 A. Yes, the policy does indicate will be paid their  
10 hourly rate of pay per their regularly scheduled hours  
11 unless state law provides otherwise.

12 Q. And the policy also states, if we look on the right  
13 hand column, the first full paragraph, [\*] if a designated  
14 facility or business office is open during the emergency  
15 time frame, teammates who report to their location and work  
16 their scheduled hours will be paid premium paid for all  
17 hours worked, true?

18 A. True.

19 Q. Okay.

20 MR. JONES: Let's take a short break, please.

21 (Brief recess.)

22 Q. Ms. Prockish, I've been listening very carefully to  
23 your testimony and correct me if I have a misunderstanding.  
24 It is my understanding of your testimony that you said that  
25 the Disaster Relief Policy did not apply to the COVID-19

00078

1 crisis for two basic reasons; number one, it did not prevent  
2 teammates from performing their regular duties; number two,  
3 there was no emergency time frame identified by local  
4 leadership and the Disaster Governance Council. Did I say  
5 that correctly?

6 A. Yes, you did represent that correctly.

7 Q. Now, I would like to go to the first leg of that  
8 because I see it as two things. The first thing is this, it  
9 said that the Disaster Relief Policy only applies if during  
10 an emergency time frame when an emergency or natural  
11 disaster prevents teammates from performing their regular  
12 duties. Let's talk about that, okay.

13 Is it your testimony -- I'm not trying to put words  
14 in your mouth; I'm asking you a question. Is it your  
15 testimony that the Disaster Relief Policy provides pay  
16 continuance during an emergency time frame when a declared  
17 emergency or natural disaster prevents all teammates from  
18 performing their regular duties; and by all teammates, I  
19 mean all teammates within the declared emergency area?

20 A. Would you please repeat that?

21 Q. Sure. I'm just drilling down a little on what you  
22 said earlier. You said that the COVID-19 emergency didn't  
23 prevent teammates from performing their regular duties,  
24 okay. Does that mean in order for the Disaster Relief  
25 Policy to kick in, does the emergency have to stop all



00079

1 teammates from doing their regular duties within the  
2 emergency or disaster area or just some of it?

3 A. It does not have to be all teammates. It can be  
4 some teammates within that area. As the policy alludes to,  
5 it is based on a case-by-case basis. Local leadership will  
6 determine when it applies and to which locations and which  
7 teammates.

8 Q. But the policy doesn't say that, does it? It  
9 doesn't say that local leadership will determine which  
10 locations it will apply, does it? It says that the local  
11 leadership and the Disaster Governance Council will identify  
12 the emergency time frame. That's what it says, doesn't it?

13 A. If you wouldn't mind pulling up the policy, I can  
14 testify to it.

15 MR. JONES: Christina, would you do that? I'm  
16 looking at page TRC 00050.

17 [Shares screen] [\*\*]

18 A. (Witness reviews document.)

19 Q. So the policy doesn't say what you just said, does  
20 it?

21 A. Not word for word, no, it does not.

22 Q. Okay.

23 A. But it does indicate that local leadership will  
24 determine the time frame in which the disaster pay applies  
25 depending on the severity of the disaster and the location.

00080

1 Q. Do you see, there you go again. You used the term  
2 instead of identify. Why is that?

3 A. That is my normal course of vocabulary. As  
4 indicated before, identify doesn't come naturally to me to  
5 use.

6 Q. Well, that's why I'd asked you earlier who wrote  
7 this. And I can't seem to figure out -- or somebody won't  
8 tell me anyway. I've asked -- either me and my colleagues  
9 asked everyone who we've deposed who wrote this, so we can  
10 go in and ask them why they use these words. But you will  
11 agree with me, will you not, that words mean things, right?

12 A. Yes.

13 Q. And you will agree with me that determine and  
14 identify are different words, true?

15 A. Yes, they are two different words with similar  
16 meaning.

17 Q. No. They have different meanings.

18 A. I believe that they have similar meanings and so  
19 I've been utilizing designated or determined.

20 Q. Have you ever picked up your dictionary and looked  
21 at them when you attempted to interpret this policy?

22 THE WITNESS: Chelsea, you're on mute.

23 MS. PETERSEN: I was inserting an objection,  
24 argumentative.

25 But you can answer.

00081

1 MR. JONES: I'm not arguing.

2 A. No, I did not pick up a dictionary.

3 Q. Have you ever utilized a dictionary when  
4 interpreting this policy to look at the words to try to --

5 A. No, I did not.

6 Q. Okay. Now, if we look at the policy, the policy  
7 provides that [\*] if a facility is closed due to a declared  
8 emergency or natural disaster as defined above, that  
9 non-exempt teammates will be paid for regularly scheduled  
10 hours at their base rate due to a designated emergency time  
11 frame; is that right?

12 A. Yes, that's what the verbiage reads.

13 Q. Okay. But that's the only situation where a  
14 teammate will be paid under the emergency, the Disaster  
15 Relief Policy? Did they have to -- can I start over.

16 That's the only occasion in which a teammate will be  
17 paid for not showing up at work under the Disaster Relief  
18 Policy; that is if the facility which that teammate works is  
19 closed because of the disaster, right?

20 A. Can you repeat the question?

21 Q. Sure. Let me go at it a different way.

22 The pay practices for non-exempt teammates says that  
23 [\*] if your facility where the teammate works is open during  
24 the emergency time frame and the teammate shows up for their  
25 scheduled hours, they'll be paid premium time, right?

00082

1 A. They will be paid premium hours while working during  
2 the designated emergency time frame.

3 Q. So that's a "yes"?

4 A. Yes.

5 Q. The pay practices for non-exempt teammates also  
6 provide that [\*] if the facility is open late or open early  
7 and the teammates show up for their scheduled work hours,  
8 they will be paid premium time, right?

9 A. Can you say that one more time?

10 Q. Sure. The pay practices for non-exempt teammates  
11 says, [\*] if a facility or business office opens late or  
12 closes early due to a declared emergency or natural  
13 disaster, the teammates are going to be notified of the  
14 approved opening and closing times. Do you see that?

15 A. Yes.

16 MS. PETERSEN: The document speaks to itself. And  
17 to the extent that you were reading that, it was not  
18 complete. I'm not sure if you want to rephrase.

19 Q. Okay. Now, it says [\*] also non-exempt teammates  
20 who arrive or leave at that approved opening and closing  
21 time will be paid their hourly rate of pay for their  
22 regularly scheduled hours unless state law provides  
23 otherwise. Do you see that?

24 A. Yes.

25 Q. [\*] Any non-exempt teammate who arrives at work

00083

1 after the approved opening and closing and leaves work  
2 before the approved opening and closing time will be paid  
3 only for the time actually worked, in which case the  
4 teammate should utilize PTO in accordance with the regular  
5 PTO policy. Did I read that correctly?

6 A. I think you skipped over a portion of it. But if  
7 it's --

8 Q. I'll read it again, okay. That's why I was trying  
9 to paraphrase it but it draws an objection, so let me read  
10 it.

11 It says, basically -- it says [\*] If a facility or  
12 business office opens late or closes early due to a declared  
13 emergency or natural disaster as defined above, teammates  
14 will be notified promptly of the approved opening and  
15 closing time. So this anticipates there may be situations  
16 where a facility will have to change its regular hours for  
17 teammates. Is that how you read it?

18 A. Yes.

19 Q. Then it says that [\*] non-exempt teammates who  
20 arrive or leave at the approved opening or closing time will  
21 be paid their regularly hourly rate of pay for their  
22 regularly scheduled hours unless state law provides  
23 otherwise. They don't get premium pay even if they change  
24 their hours, right?

25 A. Correct.

00084

1 Q. And [\*] any non-exempt teammate who arrives at work  
2 after the approved opening time or leaves work before the  
3 approved closing time, will be paid only for the time  
4 actually worked in which case the teammate could utilize PTO  
5 in accordance with the regular PTO policy. Did I read  
6 correctly?

7 A. Yes.

8 Q. So if they changed open late, open early, open late,  
9 changed the hours, the teammate works those hours, they  
10 don't get premium time, correct? Am I reading that right?

11 A. They will not get premium pay under the policy;  
12 that's correct.

13 Q. Even if their hours changed because they opened late  
14 or they closed early, if they don't show up for those  
15 scheduled irregular hours, they're not going to get paid at  
16 all. They've got to use their personal time off, right?

17 A. Correct. They're paid only for the hours worked.

18 Q. But if a designated facility or business office is  
19 open during the emergency time frame, the teammates who  
20 report to their location and work their scheduled hours will  
21 be paid premium time for all hours worked; is that the  
22 policy?

23 A. That is what the policy states, yes.

24 Q. So it is only those facilities that are open during  
25 an emergency time frame and when the employees show up at

00085

1 those open facilities and work their regularly scheduled  
2 hours, they get premium time. Am I reading the policy  
3 correctly?

4 A. When they work their scheduled hours, yes, they will  
5 be paid premium time.

6 Q. So this policy does contemplate that there will be  
7 facilities within an area of declared emergency within an  
8 emergency time frame that will be operating the scheduled  
9 hours and will be open. And those employees who show up and  
10 work their scheduled hours, will be paid premium time, true?

11 A. May I ask a clarifying question?

12 Q. Certainly.

13 A. In your question you stated declared emergency.

14 Q. Right. If you look back, let's go to 000049 -- the  
15 previous page. Do you see right here under Disaster Relief  
16 Policy?

17 A. Yes.

18 Q. It says, [\*] The Disaster Relief Policy provides for  
19 pay continuance during an emergency time frame when a  
20 declared emergency or a natural disaster prevents teammates  
21 from performing their regular duties. Did I read that  
22 correctly?

23 A. Yes.

24 Q. Do you understand what I mean by declared emergency?

25 A. By reading the remaining part of the policy, which

00086

1 defines a declared emergency or natural disaster, it helped  
2 clarify.

3 Q. But if it was a declared emergency or natural  
4 disaster, according to the policy, shall be proclaimed  
5 either by the President of the United States, a state  
6 governor, or other elected official, or of local leadership,  
7 DVP/Palmer deems it appropriate. Those are three situations  
8 where a declared emergency or natural disaster can be  
9 proclaimed, right?

10 A. Yes.

11 Q. [\*] So if in an area where there's been declared  
12 emergency during a time frame that is the emergency time  
13 frame, even if a facility is not closed, even if the  
14 employees work their scheduled hours, their regularly  
15 scheduled hours, they'll still receive premium pay, true?

16 A. Please repeat the question.

17 MR. JONES: Read it back, please.

18 (Reporter read back as requested.)

19 A. Would you please go to the next page of the policy?

20 [\*] Even if there has been a declared emergency or a natural  
21 disaster, an emergency time frame must be identified by  
22 local leadership and the governance council in order to  
23 provide premium pay to those teammates working at an open  
24 facility during their scheduled hours. The determination is  
25 dependent upon the severity of the disaster and the



00087

1 location.

2 Q. I already read that.

3 MR. JONES: Read my question again, please.

4 (Reporter read back as requested.)

5 A. Yes, those factors must be present in order for

6 teammates to get the premium pay.

7 Q. Thank you.

8 MR. JONES: Just one second. I'm going to check

9 my...

10 Q. So during a declared emergency with an emergency

11 time frame, it is only those employees who are working for

12 open facilities, not closed facilities, or facilities who

13 have had to modify their hours, there's only those employees

14 that are going to be entitled to premium pay; is that

15 correct?

16 A. Please restate the question.

17 MR. JONES: Read it back, Christina, please.

18 (Reporter read back as requested.)

19 A. Teammates at open facilities during the emergency

20 time frame will receive premium pay.

21 Q. My question was whether my statement was correct.

22 Do you want to hear the statement again?

23 A. Sure.

24 (Reporter read back as requested.)

25 A. Yes.

00088

1 Q. Thank you.

2 MR. JONES: All right. I'm going to check my notes.

3 (Pause in deposition.)

4 Q. Ms. Prockish, was anyone under the DaVita umbrella

5 paid premium paid under the disaster policy during the

6 period of March 1 through March 31, 2020?

7 A. No.

8 Q. Now, not counting this winter storm that came

9 through this year, when was the last time before that Winter

10 Storm Uri that you recall that anyone was paid under the pay

11 practices for non-exempt teammates under the Disaster Relief

12 Policy?

13 A. Outside of Winter Storm Uri there have been times

14 related to hurricanes. Hurricane Michael back in 2018 comes

15 to mind. I would have to double-check my record, but I do

16 think it was applied in other hurricanes as well,

17 potentially in 2019 and 2020.

18 Q. There was a payment by the entities under the DaVita

19 umbrella to employees because of the COVID-19 crisis, wasn't

20 there?

21 A. Could you repeat the question?

22 MR. JONES: Why don't you read it back, Christina.

23 (Reporter read back as requested.)

24 A. Could you be more specific on --

25 Q. I'd be happy to.

00089

1 A. -- you see a payment or is there something specific  
2 that you're referring to?

3 Q. Well, I'm asking. No. I'm making it a broad  
4 question because you have the information.

5 A. Yes. Teammates did receive payments throughout the  
6 pandemic, one of which was called Village Lives Awards which  
7 was a relief payment to teammates to help with expenses  
8 incurred due to the pandemic.

9 Q. Do you know if any of the entities under the DaVita  
10 umbrella applied for PPP loans?

11 A. I do not know.

12 Q. Were there any other payments besides the Village  
13 Lives payments during the COVID-19 crisis?

14 A. There have been payments for double time for  
15 overtime based on local leadership decision to implement  
16 that pay practice. And effectively it's to provide that  
17 extra compensation of 50 percent. Instead of earning  
18 overtime, the teammates are paid double time effectively for  
19 those hours.

20 Q. Okay.

21 A. There was a payment for business reimbursement to  
22 teammates under the atlas umbrella. And when I reference  
23 Atlas, those are our business office teammates that were  
24 required to perform their regular duties in a remote work  
25 environment.

00090

1 Q. Tell me about Atlas again.

2 A. Atlas is the group of individuals that support the  
3 clinical teammates under DaVita, so we are generally your  
4 business office teammates that are in a support role.

5 Q. Were you a business office teammate?

6 A. Yes, I am.

7 Q. But you don't work for Atlas?

8 A. Atlas is not an entity; it's a group name of  
9 teammates that we use to designate them.

10 Q. Yeah, okay. So DaVita did something for you?

11 A. No. I was not eligible for those payments.

12 Q. What kind of payments were they?

13 A. As previously indicated, Village Lives Awards and  
14 the business expense reimbursement.

15 Q. Did you review any documents in preparation for your  
16 testimony today?

17 A. I was provided a copy of the claims against DaVita.  
18 I recently read that over as well as Carol Strong's -- sorry  
19 -- it's not a testimony. I'm blanking on the appropriate  
20 word.

21 Q. Can I ask you a --

22 MS. PETERSEN: Briefly if I could -- and obviously  
23 the witness has already disclosed two documents.

24 But I'm going to instruct the witness that for  
25 further discussion regarding documents provided in

00091

1 preparation for the deposition today, that that's considered

2 to be attorney-client, the compilation of those exhibits.

3 And I would instruct the witness to not answer further.

4 THE WITNESS: My apology.

5 Q. So did someone give you a copy of Ms. Strong's

6 deposition?

7 A. Deposition, no. I do not have a copy of her

8 deposition.

9 Q. How about her declaration -- the document I showed

10 you earlier, did you ever see that document?

11 A. Yes.

12 Q. Had you ever seen that document before I showed it

13 to you today?

14 A. Briefly. It would -- pardon me?

15 Q. Had you ever seen that document before I showed it

16 to you today?

17 A. Briefly.

18 Q. What other documents did you review in preparation

19 for your testimony today?

20 MS. PETERSEN: I'm instructing the witness not to

21 answer.

22 Q. On what basis?

23 MS. PETERSEN: Attorney-client privilege. As I

24 indicated earlier, the selection of documents for

25 preparation for this deposition is work product and part of

00092

1 attorney-client privileged conversations.

2 MR. JONES: We'll mark this part of the deposition,

3 please, and we'll suspend the deposition at this time.

4 Thank you, Ms. Prokish.

5 I intend to seek the guidance of the court on that.

6 MS. PETERSEN: And I do not -- not that it was asked

7 -- but on the record I do not have any further questions.

8 And my expectation is that the deposition is closed but for

9 this open issue. And I understand that counsel --

10 MR. JONES: Your expectation may be misplaced, but

11 I'll put you on fair notice.

12 MS. PETERSEN: Okay. Counsel, it's easier if I

13 could get just get my full thought before you speak over but

14 your point is taken. We agree to disagree.

15 (Adjourned at 5:38 p.m.)

16 (Signature reserved.)

17 [sig/cert/corr]

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